

Construction Contracts Bill

Government Bill

Explanatory note

General policy statement

This Bill is intended to facilitate prompt and regular payments within the construction industry. Typically, construction industry contracts provide for work to be paid after the work has been carried out. Payments are usually made by instalments as the work progresses, but they are very seldom made in advance. This pattern of payments often means that a developer, principal, or head-contractor with cash-flow problems may deliberately delay payment for work done and, in effect, use those further down the contractual chain (for example, subcontractors) to partly finance the construction project. It also means that, if a developer or principal becomes insolvent, head-contractors and subcontractors may not be paid at all for work that they have already carried out.

Subcontractors are in a particularly vulnerable position because of 2 factors. The first is that most construction contracts contain provisions (commonly referred to as “pay when paid” and “pay if paid” clauses) that make a party’s obligation to pay dependent on that party first receiving payment from someone else. Subcontractors are often the ones who are affected the most by these provisions because it is not commercially feasible for them to impose “pay when paid” provisions in their contracts with their own employees and suppliers. Furthermore, subcontractors are not always aware whether firms further up the contractual chain have actually been paid or not. This provides an opportunity for head-contractors to withhold or divert payments from subcontractors for completed work. The second factor is that any right that an unpaid subcontractor might have to suspend work is often excluded by the terms of the construction contract. Thus, subcontractors are effectively unable to suspend

work, even if they have not been paid. If a head-contractor's business fails after subcontractors have been carrying out work for some time without being paid, the consequences for the subcontractors involved are significant, including business failure and job losses for the subcontractors' employees.

The objective of this Bill is to reform the law relating to construction contracts and, in particular,—

- to facilitate regular payments between the parties to a construction contract; and
- to provide for the resolution of disputes arising under a construction contract; and
- to provide remedies for the recovery of payments under a construction contract.

The Bill achieves this by—

- invalidating “pay when paid” and “pay if paid” clauses of construction contracts;
- setting out default provisions that will require (except in the case of home owners) periodic payments to be made within the construction industry, unless the parties to a construction contract have specifically agreed otherwise;
- providing that payment may not be withheld unless a notice has been given to the payee that states adequate reasons for withholding the money;
- establishing a quick and inexpensive adjudication process for resolving disputes that allows a binding (but not final) determination to be made in relation to, among other things, whether any of the parties to a construction contract are liable to pay an amount under the contract;
- allowing a party to a construction contract to suspend work if that party has not been paid without good reason;
- enabling a party to a construction contract who is owed money for carrying out construction work under the contract to register, in certain limited circumstances, a charge against the construction site if that site is owned by a person related to the party owing the money.

The Bill is based on work carried out separately by the Law Commission and by a working group comprising representatives from various sectors of the construction industry. It closely follows Part II

of the Housing Grants, Construction and Regeneration Act 1996 (United Kingdom) and the Building and Construction Industry Security of Payment Act 1999 (New South Wales).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 states that the Bill comes into force on the day after the date of assent.

Part 1

Preliminary provisions

Part 1 deals with the following matters:

- the purpose of the Act:
- overview of provisions:
- interpretation:
- meaning of **construction work**:
- application of the Act:
- no contracting out of the Act.

Clause 3 sets out the purpose of the Bill. The purpose of the Bill is to reform the law relating to construction contracts. In particular, the Bill is intended—

- to facilitate regular payments between the parties to a construction contract; and
- to provide for the resolution of disputes arising under a construction contract; and
- to provide remedies for the recovery of payments under a construction contract.

Clause 4 provides an overview of provisions.

Clause 5 is the interpretation provision. It defines certain words and expressions that are used in the Bill. The core definitions are—

- **commercial construction contract** (which means a contract for carrying out construction work in which none of the parties is a residential occupier of the premises that are the subject of the contract):
- **construction contract** (which means a commercial construction contract or a residential construction contract; and includes any variation to the construction contract):

- **construction work** (which is defined in *clause 6*):
- **residential construction contract** (which means a contract for carrying out construction work in which one of the parties is the residential occupier of the premises that are the subject of the contract).

The definition of **construction work** in *clause 6* is broad and includes almost every aspect of the construction of a building or structure.

Clause 7 provides that the Act binds the Crown.

Clauses 8 and 9 set out, respectively, when the Bill does and does not apply. Except in the case of residential construction contracts, the Bill applies to every construction contract that—

- relates to the carrying out of construction work in New Zealand; and
- is entered into after the commencement of the Act.

As long as a construction contract relates to the carrying out of construction work in New Zealand and is entered into after the commencement of the Act, the Bill applies to that contract regardless of whether the contract is governed by a law other than New Zealand law or whether it is executed outside of New Zealand.

In the case of residential construction contracts, the Bill applies except for the following provisions:

- *clauses 13 to 16* (which set out default provisions relating to periodic payments);
- *Part 4* (which relates to other measures for securing payment under the Act).

Certain classes of contract are excluded from the Bill, as are certain classes of contractual provisions. An example of a contract that is excluded from the Bill is a construction contract under which a party undertakes to carry out construction work as an employee (within the meaning of section 6 of the Employment Relations Act 2000) of the party for whom the work is to be carried out.

Clause 10 provides that the Bill, when enacted, has effect despite any provision to the contrary in any agreement or contract. The effect of this clause is that a provision of any agreement or contract that excludes, modifies, or restricts the operation of the Act is void.

Part 2

Payments

Part 2 deals with the following key concepts in the Bill:

- invalidating conditional payment provisions of a construction contract (commonly referred to as “pay when paid” and “pay if paid” clauses) that make a party’s obligation to pay dependent on another party’s payment (*clause 11*):
- allowing parties to a construction contract to retain the freedom to agree on an adequate mechanism for determining what, and when, periodic payments become due under the contract (*clause 12*):
- making certain default provisions apply in circumstances where the parties to a construction contract fail to agree on an adequate mechanism for determining what, and when, periodic payments become due under the contract (*clause 13*):
- establishing a mechanism that enables a party to serve on another party a payment demand that sets out the amount that is claimed to be due for construction work carried out, and for that other party to respond by means of a payment schedule that indicates an amount that is proposed to be paid.

Clauses 14 to 16 are the default provisions. The relevant provisions of these clauses apply to the extent that the provisions relate to any matter referred to in *clause 12* for which an adequate mechanism has not been agreed on between the parties to a construction contract.

Clause 14 provides that a party to a construction contract who has agreed to carry out construction work is entitled to periodic payments calculated in accordance with *clause 15*.

Clause 15 provides that a periodic payment must be calculated by reference to the relevant period for the payment and the value of construction work carried out, or to be carried out, during that period. The relevant period for a periodic payment is essentially each period of 4 weeks’ duration from the date on which construction work was first carried out under the construction contract. The value of construction work during each of those periods must be calculated with regard to certain specified matters (for example, the contract price) or, if the contract does not expressly provide for the contract price, the reasonable value of the work carried out during that period.

Clause 16 provides that a periodic payment becomes due and payable on the date occurring 10 working days after a payment demand is served under *clause 18* in relation to that payment.

Clauses 17 to 22 set out the procedure for making and responding to payment demands.

Clause 17 is an interpretation provision. It defines words such as **payee** (which means the party to a construction contract who is entitled to a periodic payment) and **payer** (which means the party to a construction contract who is liable for that payment).

Clause 18 enables a payee to serve a payment demand on the payer. The payment demand will indicate the amount that the payee claims to be due for construction work carried out during the relevant period.

Clause 19 enables a payer to respond by providing a payment schedule to the payee. The payment schedule will indicate the amount that the payer proposes to pay to the payee, along with the payer's reasons for any difference between that amount and the amount claimed by the payee.

Clause 20 provides that a payer becomes liable to pay the amount claimed by the payee if the payer fails to provide a payment schedule to the payee within the time required by the relevant construction contract or, if the contract does not provide for the matter, within 10 working days after a payment demand is served, whichever is the later.

Clause 21 provides that a payee will be able to recover the whole amount of the payee's claim as a debt, and to serve notice of intention to suspend carrying out construction work, if the payer fails to provide a payment schedule within the time allowed under *clause 20*.

Clause 22 provides that a payee will be able to recover the amount set out in the payer's payment schedule, and to serve notice of intention to suspend carrying out construction work, if the payer provides the payment schedule within the time allowed under *clause 20* but fails to pay the amount by its due date.

Part 3

Adjudication of disputes

Part 3 establishes a fast-track dispute resolution process that—

- applies to any dispute arising under a construction contract (*clause 23*):
- preserves the ability of parties to a construction contract to submit a dispute between them to arbitration, mediation, the courts, or other dispute resolution procedure but, at the same time, creates incentives for parties to move away from those more formal and relatively time-consuming procedures (*clause 24*):
- allows the parties to obtain a quick determination in respect of the matters in dispute that is binding and enforceable until the dispute is finally determined in court or arbitral proceedings (*clause 25*).

Clauses 26 to 31 set out the procedure for initiating an adjudication and the appointment of an adjudicator. An adjudication is initiated by a party serving a written notice of that party's intention to refer a dispute to adjudication (the **notice of adjudication**) on the other party or parties to the construction contract. As soon as possible after the notice of adjudication has been served, a person chosen by agreement between the relevant parties or, where appropriate, by a nominating body or an authorised nominating authority is requested to act as adjudicator. That person must indicate within 2 working days of receiving the request whether he or she is prepared to act. If so, the person must serve a notice of acceptance on the parties that must include confirmation that he or she meets the eligibility criteria for adjudicators (as set out in *clause 28*). On serving such a notice, the person is taken to have been appointed as adjudicator to determine the dispute.

Clause 32 provides that, unless extended by agreement between the parties, an adjudicator's jurisdiction is limited to determining—

- the matters referred to in *clause 37*, namely—
 - whether or not any of the parties to the adjudication are liable to make a payment under the contract:
 - the amount of that payment:
 - the date on which that amount became or becomes due; and
- the matters referred to in *clause 50*, namely—

- whether or not the respondent to an adjudication claim is a person related to the owner of the relevant construction site;
- whether or not the respondent is liable to pay an amount owed to the claimant; and
- any matters that are incidental or consequential to the determination.

Clauses 33 and 34 set out the duties and powers of an adjudicator. An adjudicator must act independently, impartially, and in a timely manner. He or she must also avoid incurring unnecessary expense and comply with the principles of natural justice. Subject to these requirements, an adjudicator may conduct the adjudication in any manner he or she thinks fit. An adjudicator may, for instance, appoint an expert adviser to report on specific issues, provided that the consent of the parties is obtained before the appointment is made.

Clause 35 provides that an adjudicator must consider only certain specified matters in determining a dispute. Those matters include the claimant's adjudication claim and the respondent's response, as well as any submissions made by the parties.

Clauses 36 and 37 relate to the timing and substance of an adjudicator's determination. An adjudicator has 20 working days to determine a dispute or any further time that the parties to the adjudication may agree.

Clause 39 provides that a party to the adjudication will be able to recover the amount determined by an adjudicator as a debt and, if that party is a party who carries out construction work, to serve notice of intention to suspend the carrying out of construction work so long as the amount remains unpaid.

Clauses 41 to 48 deal with miscellaneous matters relating to adjudication. These clauses provide that—

- every notice of adjudication served on a residential occupier in relation to a dispute under a residential construction contract must set out, prominently, additional information regarding the occupier's rights and obligations in respect of, and the process involved in, an adjudication (*clause 41*);
- a notice of adjudication is not invalid if the claimant fails to comply with the requirements of *clause 26(2)* regarding details to be included in the notice as long as the notice is in

writing, the nature of the dispute and the names of the parties are clearly stated, and any non-compliance does not mislead or unjustly affect the recipient (*clause 42*):

- the Minister responsible for the administration of the Act may authorise persons as nominating authorities (to nominate adjudicators for the purposes of the Act) and may withdraw any authority so given (*clause 43*):
- a claimant may serve a new notice of adjudication if no adjudicator's notice of acceptance is received within 5 working days of the date of the request for a person to act as an adjudicator or if an adjudicator fails to determine the dispute within the time allowed under *clause 36* (*clause 44*):
- parties may be represented by legal or other representatives at the adjudication proceedings (*clause 45*):
- adjudication proceedings must be kept confidential (*clause 46*):
- an adjudicator's fees must be borne in equal proportions by the parties to the adjudication and those fees are payable only if the adjudicator determines the dispute within the time allowed under *clause 36* (*clause 47*):
- adjudicators are excluded from liability for anything done or omitted to be done (other than in bad faith or without reasonable care) in the course of the exercise of their functions, duties, or powers under the Act (*clause 48*).

Part 4

Other measures for securing payment under this Act

Part 4 provides for the following additional measures for securing payment under the Act:

- suspension of construction work (*clause 49*):
- registration of a charge against a construction site in circumstances where the party owing money under a construction contract is a person related to the owner of the construction site (*clauses 50 and 51*).

Clause 49 allows a party to a construction contract to suspend carrying out construction work if a periodic payment is not paid in full by its due date, or an adjudicator's determination that an amount must be paid to that party is not complied with, and at least 5 working days have passed since notice of intention to do so has been

served under *clause 21, clause 22, or clause 39*. A party who suspends carrying out construction work is protected from any civil liability that arises as a consequence of the suspension.

Clause 50 entitles a claimant to register a charge against a construction site under the Statutory Land Charges Registration Act 1928 if all of the following circumstances exist:

- the claimant has referred to adjudication a dispute about money owed to the claimant under a construction contract:
- the claimant has specifically sought a charge against the relevant construction site in the notice of adjudication:
- the adjudicator determines that the respondent is a person related to the owner of the construction site and that the respondent is liable to pay the money owed to the claimant.

The adjudicator's role under *clause 50* is limited to determining whether the preconditions for a charge apply. The charge itself arises by operation of the Act, rather than being awarded by an adjudicator.

For the purposes of *clause 50*, the term **person related** is given the same meaning as the words "person related to a company" in section CF 3(12) of the Income Tax Act 1994, except that references in that provision to a specified company must be read as if they were references to an owner of a construction site. In terms of that definition, a **respondent** is a person related to the owner of a construction site if, for example, the respondent is—

- a company that owns, or has in any way the power to control (whether directly or indirectly), or has the right to acquire, 20% or more of the ordinary shares of the owner (where the owner is also a company):
- a company, 20% or more of the voting rights of which the owner owns, or has in any way the power to control (whether directly or indirectly), or has the right to acquire:
- a person who is a partner or co-venturer of the owner:
- a trustee of a trust where the owner, or another person who is a person related to the owner, benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust either directly or indirectly.

Clause 51 sets out special procedural requirements relating to an adjudication in which the claimant seeks a charge against the relevant construction site. An adjudication of this kind must be conducted with particular regard to the right of the owner to be party to

the adjudication proceedings and to be present at those proceedings. In addition, the adjudicator must be nominated by an authorised nominating authority and must be a person who has the qualifications, expertise, and experience prescribed by regulations for this purpose. It is intended that adjudicators dealing with this kind of adjudication should be persons who have legal or similar qualifications.

Part 5

Miscellaneous provisions

Part 5 provides for—

- service of notices (*clauses 52 to 55*):
 - regulation-making powers (*clause 56*).
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37	Adjudicator's determination: substance	47	Adjudicator's fees
	Subpart 4—Effect of adjudicator's determination	48	Adjudicators excluded from liability
38	Duty to pay amount determined by adjudicator		Part 4
39	Consequences of not complying with adjudicator's determination		Other measures for securing payment under this Act
40	Effect of review or other proceed- ing on adjudicator's determination		Subpart 1—Suspension of work
	Subpart 5—Miscellaneous matters relating to adjudication	49	Suspension of construction work
41	Special provisions for residential construction contracts		Subpart 2—Charges on land of related person
42	Compliance with requirements of Act relating to supply of certain information		<i>Charges on land: general</i>
43	Nominating authorities	50	When amount determined by adju- dicator constitutes charge on land of related person
44	Claimant may seek fresh adjudica- tion if no adjudicator's notice of acceptance received or dispute not determined		<i>Charges on land: procedure for adjudication</i>
45	Parties may be represented at adju- dication proceedings	51	Special provisions for adjudication where charge sought by claimant
46	Confidentiality of adjudication proceedings		Part 5
			Miscellaneous provisions
		52	Service of notices: general
		53	Service of notices: post
		54	Service of notices: fax
		55	Service of notices: e-mail
		56	Regulations

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Construction Contracts Act **2001**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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Part 1 Preliminary provisions

Purpose

3 Purpose

The purpose of this Act is to reform the law relating to construction contracts and, in particular,—

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- (a) to facilitate regular payments between the parties to a construction contract; and
- (b) to provide for the resolution of disputes arising under a construction contract; and

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- (c) to provide remedies for the recovery of payments under a construction contract.

Overview

4 Overview

- In this Act,— 5
- (a) preliminary matters (for example, the interpretation and application of the Act) are set out in **sections 5 to 10:**
- (b) provisions invalidating any contractual clause that makes payment to any party to a construction contract conditional on the payer first receiving payment from someone else are set out in **section 11:** 10
- (c) provisions confirming that parties are free to agree on an adequate mechanism for determining periodic payments are set out in **section 12:**
- (d) default provisions granting an entitlement to periodic payments, and setting out a statutory mechanism for determining the amount of, and the due date for, those payments, in circumstances where the relevant construction contract is silent on any of those matters are set out in **sections 13 to 16:** 15 20
- (e) provisions establishing a procedure that allows a party to a construction contract to recover a periodic payment by making a payment demand, and the party who is liable for that payment to respond by means of a payment schedule, are set out in **sections 17 to 22:** 25
- (f) provisions relating to the adjudication of disputes are set out in **sections 23 to 48:**
- (g) provisions granting a party to a construction contract who is owed money under the contract a statutory right to suspend the carrying out of construction work until payment is made are set out in **section 49:** 30
- (h) provisions enabling a party to a construction contract who is owed money for carrying out construction work under the contract to register, in certain limited circumstances, a charge against the construction site if that site is owned by a person related to the party owing the amount are set out in **sections 50 and 51:** 35
- (i) miscellaneous administrative matters (for example, the method of service of notices) are set out in **sections 52 to 56.** 40

*Interpretation***5 Interpretation**

In this Act, unless the context otherwise requires,—

adjudicator means an individual appointed in accordance with this Act to determine a dispute that has been referred to adjudication 5

authorised nominating authority means a person authorised by the Minister under **section 43** to nominate an adjudicator

claimant means a party to a construction contract who refers a dispute to adjudication 10

commercial construction contract means a contract for carrying out construction work in which none of the parties is a residential occupier of the premises that are the subject of the contract

construction contract— 15

(a) means a commercial construction contract or a residential construction contract; and

(b) includes any variation to the construction contract

construction work or **work** has the meaning set out in **section 6** 20

contract price, in relation to a construction contract, means the total amount payable under the contract for carrying out the construction work to which the contract relates

dispute means a dispute that arises under a construction contract 25

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

nominating body means a person (whether incorporated or not) who nominates adjudicators for the purposes of this Act 30

notice of adjudication means the notice referred to in **section 26**

payee has the meaning set out in **section 17**

payer has the meaning set out in **section 17** 35

payment demand is the demand referred to in **section 18**

payment schedule is the schedule referred to in **section 19**

periodic payment—

- (a) means a payment for construction work carried out under a construction contract that is in the nature of an instalment (whether or not of equal value) of the contract price for the contract (other than an amount that is, or is in the nature of, a deposit under the contract); and 5
- (b) includes any final payment under the contract

person related has the meaning set out in **section 50**

residential construction contract means a contract for carrying out construction work in which one of the parties is the residential occupier of the premises that are the subject of the contract 10

residential occupier means an individual who is occupying, or intends to occupy, the premises that are the subject of a construction contract wholly or mainly as a dwellinghouse

respondent means a party to a construction contract against whom a dispute is referred to adjudication 15

working day means any day other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and 20
- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
- (c) a day in the period commencing with 25 December in any year and ending with the close of 2 January in the following year; and 25
- (d) if 1 January in any year falls on a Friday, the following Monday; and
- (e) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

6 Meaning of construction work 30

(1) In this Act, unless the context otherwise requires, **construction work** means any of the following work:

- (a) the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any building, erection, edifice, or structure forming, or to form, part of land (whether permanent or not and whether constructed wholly or partly above or below ground level): 35

- (b) the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any works forming, or to form, part of land; including—
- (i) any road, motorway, aircraft runway, docks, harbour works, railway, cableway, or tramway: 5
 - (ii) any canal, inland waterway, pipeline, reservoir, aqueduct, water main, well, or sewer:
 - (iii) any electricity, water, gas, or telephone reticulation: 10
 - (iv) any telecommunication apparatus, industrial plant, and any installation for purposes of land drainage or coast protection:
- (c) the installation in any building or structure of fittings forming, or to form, part of land; including heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, security, and communications systems: 15
- (d) the alteration, repair, maintenance, extension, demolition, or dismantling of the systems mentioned in **paragraph (c)**: 20
- (e) the external or internal cleaning of buildings and structures, so far as it is carried out in the course of their construction, erection, alteration, repair, restoration, maintenance, or extension: 25
- (f) any operation that forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in **paragraphs (a) to (d)**; including—
- (i) site clearance, earthmoving, excavation, tunnelling, and boring; and 30
 - (ii) laying foundations; and
 - (iii) erecting, maintaining, or dismantling scaffolding or cranes; and
 - (iv) prefabricating components to form part of any building or structure, whether carried out on-site or off-site; and 35
 - (v) site restoration, landscaping, and the provision of roadways and other access works:
- (g) the painting or decorating of the internal or external surfaces of any building or structure. 40
- (2) Despite **subsection (1), construction work** does not include any of the following work:

- (a) drilling for or extracting oil or natural gas;
- (b) extracting (whether by underground or surface working) minerals, including tunnelling or boring, or constructing underground works, for that purpose.

Application

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7 Act binds the Crown

This Act binds the Crown.

8 When Act applies

- (1) Subject to this section and **section 9**, this Act applies to every construction contract that— 10
 - (a) relates to carrying out construction work in New Zealand; and
 - (b) is entered into after the commencement of this Act.
- (2) The following provisions do not apply to a residential construction contract: 15
 - (a) **sections 13 to 16** (which set out default provisions that relate to periodic payments); and
 - (b) **Part 4** (which relates to other measures for securing payment under this Act).

9 When Act does not apply

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This Act does not apply to—

- (a) a construction contract that forms part of a loan agreement, a contract of guarantee, or a contract of insurance, under which any person undertakes— 25
 - (i) to lend money or to repay money lent; or
 - (ii) to guarantee payment of money owing or repayment of money lent; or
 - (iii) to provide an indemnity for construction work carried out under the construction contract:
- (b) a construction contract under which it is agreed that the consideration payable for construction work carried out under the contract is to be calculated otherwise than by reference to the value of the work carried out: 30
- (c) a construction contract under which a party undertakes to carry out construction work as an employee (within the meaning of section 6 of the Employment Relations Act 2000) of the party for whom the work is to be carried out: 35

- (d) a construction contract to the extent that it contains—
 - (i) provisions under which a party undertakes to carry out construction work as a condition of a loan agreement with any person; or
 - (ii) provisions under which a party undertakes— 5
 - (A) to lend money or to repay money lent; or
 - (B) to guarantee payment of money owing or repayment of money lent; or
 - (C) to provide an indemnity for construction work carried out under the construction 10 contract. 10

No contracting out

10 No contracting out of Act

This Act has effect despite any provision to the contrary in any agreement or contract. 15

**Part 2
Payments**

Subpart 1—Prohibition of conditional payment
provisions of construction contracts

11 Conditional payment provisions ineffective 20

- (1) A conditional payment provision of a construction contract has no legal effect and accordingly—
 - (a) is not enforceable in any civil proceedings; and
 - (b) may not be used as a basis for withholding periodic payments that are due and payable under the contract. 25

- (2) In this section,—

amount owed, in relation to a construction contract, means either the whole or part of any amount of money owing for construction work that has already been carried out under the contract 30

civil proceedings includes proceedings before an adjudicator under this Act

conditional payment provision of a construction contract means a provision of the contract—

- (a) that makes the obligation of one party (**party A**) to pay an amount owed to another party (**party B**) conditional 35

- on party A receiving payment from a further party (party C); or
- (b) that makes the due date for payment of an amount owed by party A to party B contingent on the date on which party A receives payment from party C; or 5
 - (c) that is commonly referred to in the construction industry as a “pay when paid” or “pay if paid” clause of a construction contract; or
 - (d) that is of a prescribed kind (if any).

Subpart 2—Periodic payment provisions of construction contracts 10

Parties may agree on express terms for periodic payments

12 Parties free to agree on periodic payment provisions in construction contract

The parties to a construction contract are free to agree between themselves on an adequate mechanism for determining— 15

- (a) the number of periodic payments under the contract:
- (b) the interval between those payments:
- (c) the amount of each of those payments: 20
- (d) the date when each of those payments become due.

Default provisions for periodic payments in absence of express terms

13 Application of sections 14 to 16

If the parties to a construction contract fail to agree on an adequate mechanism for determining any of the matters referred to in **section 12**, the relevant provisions of **sections 14 to 16** apply to the extent that those provisions relate to any matter for which an adequate mechanism has not been agreed on between the parties. 25 30

14 Right to periodic payments

A party who has agreed to carry out construction work under a construction contract is entitled to periodic payments calculated in accordance with **section 15**.

15 Amount of periodic payment

- (1) The amount of a periodic payment must be calculated by reference to—
- (a) the relevant period for that payment; and
 - (b) the value of the construction work carried out, or to be carried out, during that period. 5
- (2) For the purposes of **subsection (1)(a)**, the relevant period for a periodic payment under a construction contract is—
- (a) the period commencing on the date on which construction work was first carried out under the contract and ending 4 weeks after that date (the **first period**); and 10
 - (b) each period of 4 weeks' duration after the first period.
- (3) For the purposes of **subsection (1)(b)**, the value of construction work must be calculated with regard to—
- (a) the contract price for the work; and 15
 - (b) any other rates or prices set out in the contract; and
 - (c) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price set out in the contract, is to be adjusted by a specific amount; and 20
 - (d) if any work is defective, the estimated cost of rectifying the defect. 20
- (4) If the contract does not expressly provide for the matters referred to in **subsection (3)(a) and (b)**, the value of construction work must be calculated with regard to— 25
- (a) the reasonable value of the work; and
 - (b) the reasonable value of any variation agreed to by the parties to the contract; and
 - (c) if any work is defective, the estimated cost of rectifying the defect. 30

16 Due date for payment

A periodic payment under a construction contract becomes due and payable on the date occurring 10 working days after a payment demand is served under **section 18** in relation to the payment. 35

Subpart 3—Procedure for making and responding to payment demands

17 Interpretation

In this subpart, unless the context otherwise requires,—

payee means the party to a construction contract who is entitled to a periodic payment 5

payer means the party to a construction contract who is liable for that payment

scheduled amount means an amount of periodic payment specified in a payment schedule that the payer proposes to pay to the payee in response to a payment demand 10

specified amount means an amount of periodic payment specified in a payment demand that the payee claims to be due for construction work carried out.

18 Payment demands 15

- (1) A payee may serve a payment demand on the payer for each periodic payment,—
 - (a) if the contract provides for the matter, at the end of the relevant period that is specified in, or is determined in accordance with the terms of, the contract; or 20
 - (b) if the contract does not provide for the matter, at the end of the relevant period referred to in **section 15(2)**.
- (2) A payment demand must—
 - (a) be in writing; and
 - (b) identify the construction work to which the periodic payment relates; and 25
 - (c) indicate a specified amount; and
 - (d) indicate the manner in which the payee calculated the specified amount; and
 - (e) state that it is made under this Act. 30
- (3) If a payment demand is served on a residential occupier, it must be accompanied by—
 - (a) an outline of the process for responding to that demand; and
 - (b) an explanation of the consequences of not responding to a payment demand and not paying the scheduled amount in full. 35
- (4) The matters referred to in **subsection (3)(a) and (b)** must—
 - (a) be in writing; and

- (b) be in the prescribed form (if any).

19 Payment schedules

- (1) A payer may respond to a payment demand by providing a payment schedule to the payee.
- (2) A payment schedule must— 5
- (a) be in writing; and
- (b) identify the payment demand to which it relates; and
- (c) indicate a scheduled amount.
- (3) If the scheduled amount is less than the specified amount, the payment schedule must indicate— 10
- (a) the manner in which the payer calculated the scheduled amount; and
- (b) the payer's reason or reasons for the difference between the scheduled amount and the specified amount; and
- (c) in a case where the difference is because the payer is withholding payment on any basis, the payer's reason or reasons for withholding payment. 15

20 Liability for paying specified amount

- A payer becomes liable to pay the specified amount on the due date for the periodic payment to which the payment demand relates if— 20
- (a) a payee serves a payment demand on a payer; and
- (b) the payer does not provide a payment schedule to the payee within whichever is the later of—
- (i) the time required by the relevant construction contract; or 25
- (ii) if the contract does not provide for the matter, 10 working days after the payment demand is served.

21 Consequences of not paying specified amount where no payment schedule provided 30

- (1) The consequences specified in **subsection (2)** apply if the payer—
- (a) becomes liable to pay the specified amount to the payee under **section 20** as a consequence of failing to provide a payment schedule to the payee within the time allowed by **section 20(b)**; and 35

- (b) fails to pay the whole, or any part, of the specified amount on or before the due date for the periodic payment to which the payment demand relates.
- (2) The consequences are that the payee—
- (a) may recover the unpaid portion of the specified amount from the payee, as a debt due to the payee, together with the costs of recovery, in any court of competent jurisdiction; and 5
- (b) may serve notice on the payer of the payee’s intention to suspend the carrying out of construction work under the construction contract. 10
- (3) A notice referred to in **subsection (2)(b)** must state—
- (a) the ground or grounds on which the proposed suspension is based; and
- (b) that the notice is given under this Act. 15
- (4) In any proceedings for the recovery of a debt under this section, the court must not enter judgment in favour of the payee unless it is satisfied that the circumstances referred to in **subsection (1)** exist.
- 22 Consequences of not paying scheduled amount in manner indicated by payment schedule 20**
- (1) The consequences specified in **subsection (2)** apply if—
- (a) a payee serves a payment demand on a payer; and
- (b) the payer provides a payment schedule to the payee within the time allowed by **section 20(b)**; and 25
- (c) the payment schedule indicates a scheduled amount that the payer proposes to pay to the payee; and
- (d) the payer fails to pay the whole, or any part, of the scheduled amount on or before the due date for the periodic payment to which the payment demand relates. 30
- (2) The consequences are that the payee—
- (a) may recover the unpaid portion of the scheduled amount from the payer, as a debt due to the payee, together with the costs of recovery, in any court of competent jurisdiction; and 35
- (b) may serve notice on the payer of the payee’s intention to suspend the carrying out of construction work under the construction contract.
- (3) A notice referred to in **subsection (2)(b)** must state—

- (a) the ground or grounds on which the proposed suspension is based; and
 - (b) that the notice is given under this Act.
- (4) In any proceedings for the recovery of a debt under this section, the court must not enter judgment in favour of the payee unless it is satisfied that the circumstances referred to in **subsection (1)** exist. 5

Part 3

Adjudication of disputes

Subpart 1—Preliminary 10

23 Right to refer disputes to adjudication

- (1) Any party to a construction contract is entitled to refer a dispute to adjudication.
- (2) An example of a dispute is a disagreement between the parties to a construction contract about whether or not an amount is payable under the contract (for example, a periodic payment) or the reasons given for non-payment of that amount. 15

24 Effect of Part on other dispute resolution procedures

- (1) Nothing in this Part prevents the parties to a construction contract from agreeing (whether before or after a dispute arises) to submit a dispute between them to another dispute resolution procedure (for example, to mediation, arbitration, or the courts). 20
- (2) Nothing in any other enactment or rule of law or any contract affects the application of this Part. 25

25 Effect of Part on civil proceedings

- (1) Nothing done under, or for the purposes of, this Part affects any civil proceedings arising under a construction contract (whether under this Part or otherwise).
- (2) However, in any proceedings before a court or arbitral tribunal in relation to any matter arising under a construction contract, the court or tribunal— 30
- (a) must allow for any amount paid to a party to the contract under, or for the purposes of, this Part in any order or award it makes in those proceedings; and 35

- (b) may make any orders that it considers appropriate for the restitution of any amount so paid, and any other orders that it considers appropriate, having regard to its decision on those proceedings.

Subpart 2—Procedure for initiating adjudication and appointing adjudicator 5

26 How to initiate adjudication

- (1) Adjudication is initiated by a claimant serving on the other party or parties to the construction contract a written notice of the claimant's intention to refer a dispute for adjudication (the **notice of adjudication**). 10
- (2) The notice of adjudication must state—
- (a) the date of the notice:
 - (b) the nature and a brief description of the dispute and of the parties involved: 15
 - (c) details of where and when the dispute arose:
 - (d) whether a charge under **section 50** is being sought:
 - (e) the names and addresses of the parties to the contract (including, if appropriate, the addresses that the parties have specified for the service of notices). 20

27 Selection of adjudicator

- (1) As soon as practicable after the notice of adjudication has been served, the claimant must—
- (a) request the person (if any) chosen by agreement between the relevant parties to act as adjudicator; or 25
 - (b) if the person referred to in **paragraph (a)** has already indicated that he or she is unwilling or unable to act, request any other person chosen by agreement between the relevant parties to act as adjudicator; or
 - (c) if no person is agreed on, request a nominating body chosen by agreement between the relevant parties to select a person to act as adjudicator; or 30
 - (d) if the persons referred to in **paragraphs (a) and (b)** are unwilling or unable to act and **paragraph (c)** does not apply, request an authorised nominating authority chosen by the claimant to select a person to act as adjudicator. 35

- (2) An agreement about who may act as an adjudicator is not binding on the parties to the contract if that agreement was made before the dispute between them arose.
- (3) It is the duty of a nominating body or, as the case may be, an authorised nominating authority to select a person and to request that person to act as adjudicator as soon as practicable. 5
- (4) A request made under this section must—
- (a) be in writing; and
 - (b) be accompanied by a copy of the notice of adjudication; and 10
 - (c) state that it is made under this Act.

28 Eligibility criteria for adjudicators

- (1) A person is eligible to be an adjudicator in relation to a construction contract if the person meets the requirements relating to qualifications, expertise, and experience as may be prescribed (if any). 15
- (2) A person is not eligible to be an adjudicator on a construction contract in which—
- (a) the person is a party; or
 - (b) the person has an interest (whether financial or otherwise); or 20
 - (c) a party to the contract has a direct or indirect relationship with the person.
- (3) A person must disclose to the parties in dispute and, as the case may be, the nominating body or the authorised nominating authority the matters referred to in **subsection (2)(b) or subsection 2(c)**. 25

29 Appointment of adjudicator

- (1) A person requested to act as an adjudicator in accordance with **section 27** must, within 2 working days of receiving the request, indicate whether he or she is willing and able to act in that capacity. 30
- (2) If the person is willing and able to act as an adjudicator, he or she must serve a notice of acceptance on the parties to the dispute and, as the case may be, the nominating body or the authorised nominating authority. 35
- (3) The notice of acceptance must confirm that the person meets the eligibility criteria for adjudicators under **section 28**.

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- (4) A notice of acceptance that fails to confirm that the person meets the eligibility criteria for adjudicators under **section 28** has no effect.
- (5) A person is appointed as an adjudicator to determine the dispute on serving a notice of acceptance that confirms the person meets the eligibility criteria for adjudicators under **section 28**. 5
- 30 Referral of dispute to adjudicator**
- (1) After an adjudicator has been appointed, the claimant must, within 5 working days of receiving the adjudicator's notice of acceptance, refer the dispute in writing (the **adjudication claim**) to the adjudicator. 10
- (2) The adjudication claim—
- (a) must specify the nature or the grounds of the dispute or, to the extent that it remains relevant, be accompanied by a copy of the notice of adjudication; and 15
 - (b) must be accompanied by copies of, or relevant extracts from, the construction contract; and
 - (c) may contain submissions and documents that the claimant intends to rely on. 20
- (3) The claimant must serve a copy of the adjudication claim on every other party to the adjudication at the same time that it is served on the adjudicator.
- 31 Response to adjudication claim**
- (1) A respondent may serve on the adjudicator a written response to the adjudication claim— 25
- (a) within 5 working days after receiving that claim; or
 - (b) within any further time that the parties to the adjudication agree.
- (2) The response may contain submissions and documents that the respondent intends to rely on. 30
- (3) The respondent must serve a copy of the response on the claimant and every party to the adjudication at the same time that it is served on the adjudicator.

Subpart 3—Conduct of adjudication proceedings

32 Jurisdiction of adjudicators

- (1) An adjudicator's jurisdiction in relation to any dispute that has been referred to adjudication is limited to determining—
- (a) the matters referred to in **sections 37(1) and 50(1)(c)**; and 5
 - (b) any other matters that are of a consequential or ancillary nature necessary to exercise or complete the exercise of the jurisdiction conferred by **paragraph (a)**.
- (2) However, the parties to an adjudication may, at any time, by written agreement, extend the jurisdiction of an adjudicator to determine any matters in addition to those mentioned in **subsection (1)**. 10

33 Duties of adjudicator

An adjudicator must—

- (a) act independently, impartially, and in a timely manner; and 15
- (b) avoid incurring unnecessary expense; and
- (c) comply with the principles of natural justice.

34 Powers of adjudicator

- (1) An adjudicator may— 20
- (a) conduct the adjudication in any manner that he or she thinks fit; and
 - (b) request further written submissions from the parties to the adjudication, but must give the relevant parties an opportunity to comment on those submissions; and 25
 - (c) set deadlines for further submissions and comments by the parties; and
 - (d) appoint an expert adviser to report on specific issues (as long as the consent of the parties is obtained before the appointment is made); and 30
 - (e) call a conference of the parties; and
 - (f) carry out an inspection of any construction work or any other thing to which the dispute relates (as long as the consent of the owner or occupier is obtained before entry to any land or premises is made). 35
- (2) The adjudicator's power to determine a dispute is not affected by the failure of any of the parties to make a submission or comment within time or to comply with the adjudicator's call for a conference of the parties.

- 35 Adjudicator’s determination: matters to be considered**
 In determining a dispute, an adjudicator must consider only the following matters:
- (a) the provisions of this Act: 5
 - (b) the provisions of the construction contract to which the dispute relates: 5
 - (c) the adjudication claim referred to in **section 30**, together with all submissions (including relevant documentation) that have been made by the claimant: 10
 - (d) the respondent’s response (if any) referred to in **section 31**, together with all submissions (including relevant documentation) that have been made by the respondent: 10
 - (e) the report of the experts appointed to advise on specific issues (if any): 15
 - (f) the results of any inspection carried out by the adjudicator. 15
- 36 Adjudicator’s determination: timing**
- (1) An adjudicator—
 - (a) must not determine a dispute until after the end of the period referred to in **section 31(1)** within which the respondent may serve on the adjudicator a written response to an adjudication claim; and 20
 - (b) must not determine a dispute having regard to that response unless it was served on the adjudicator before the end of that period. 25
 - (2) An adjudicator must determine a dispute—
 - (a) within 20 working days after the end of the period referred to in **section 31(1)** during which the respondent may serve on the adjudicator a written response to an adjudication claim; or 30
 - (b) within any further time that the parties to the adjudication agree.
- 37 Adjudicator’s determination: substance**
- (1) An adjudicator must determine—
 - (a) whether or not any of the parties to the adjudication are liable to make a payment under the contract; and 35
 - (b) if so, the amount payable; and
 - (c) the date on which that amount became or becomes payable.

- (2) An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication (whether those parties are or are not on the whole successful in the adjudication) if the adjudicator considers that those costs and expenses have been incurred unnecessarily by bad faith, unfounded allegations, or unfounded objections on the part of that party. 5
- (3) The adjudicator's determination must—
- (a) be in writing; and
 - (b) contain the reasons for the determination.
- (4) An adjudicator must give a copy of the determination to every party to the adjudication as soon as practicable after making a determination under this section. 10
- (5) **Subsection (4)** is subject to **section 47(5)**.

Subpart 4—Effect of adjudicator's determination

- 38 Duty to pay amount determined by adjudicator** 15
A party must pay the amount that an adjudicator determines that the party is liable to pay.
- 39 Consequences of not complying with adjudicator's determination**
- (1) The consequences specified in **subsection (2)** apply if a party to the adjudication fails, before the close of the relevant date, to pay the whole or part of the amount determined by an adjudicator. 20
- (2) The consequences are that the party who is owed the amount (**party A**) may— 25
- (a) recover the unpaid portion of the amount from the party who is liable to make the payment (**party B**), as a debt due to party A, together with the costs of recovery, in any court of competent jurisdiction; and
 - (b) if party A is a party who carries out construction work under a construction contract, serve notice on party B of party A's intention to suspend the carrying out of construction work under the contract. 30
- (3) A notice referred to in **subsection (2)(b)** must state— 35
- (a) the ground or grounds on which the proposed suspension is based; and
 - (b) that the notice is given under this Act.

- (4) In any proceedings for the recovery of a debt under this section, the court must not enter judgment in favour of a party unless it is satisfied that the circumstances referred to in **subsection (1)** exist.
- (5) In this section, **relevant date** means—
- (a) the date that occurs 2 working days after the date on which a copy of the relevant determination is given to the parties to the adjudication under **section 37**; or
 - (b) if the adjudicator determines a later date under **section 37(1)(c)**, that later date.
- 40 Effect of review or other proceeding on adjudicator’s determination**
- An adjudicator’s determination is binding on the parties to the adjudication and continues to be of full effect even though—
- (a) a party has applied for judicial review of the determination; or
 - (b) any other proceeding relating to the dispute between the parties has been commenced.
- Subpart 5—Miscellaneous matters relating to adjudication**
- 41 Special provisions for residential construction contracts**
- (1) A notice of adjudication to be served on a residential occupier in a dispute under a residential construction contract must, in addition to the matters in **section 26(2)**, set out prominently—
- (a) a statement of the residential occupier’s rights and obligations in the adjudication; and
 - (b) a brief explanation of the adjudication process.
- (2) The matters referred to in **subsection (1)** must be in the prescribed form (if any).
- (3) A notice of adjudication that fails to comply with **subsection (1)** has no effect.
- (4) If **subsection (3)** applies,—
- (a) the claimant may serve on a residential occupier a new notice of adjudication that complies with **subsection (1)**; and
 - (b) this Part applies as if no notice of adjudication had been served previously.

- 42 Compliance with requirements of Act relating to supply of certain information**
- (1) No notice of adjudication is invalid for any failure to comply strictly with the requirements of **section 26(2)** as long as—
- (a) the notice is in writing; and 5
 - (b) the nature of the dispute and the names of the parties involved are stated clearly in the notice; and
 - (c) any non-compliance does not mislead or unjustly affect the interests of the recipient.
- (2) **Subsection (1)** does not extend to any non-compliance with the requirement that the notice of adjudication must state, as the case may be, the matters referred to in **section 26(2)(d)** or **section 41(1)**. 10
- (3) If a claimant is for any reason unable to provide copies of, or relevant extracts from, the construction contract as required by **section 30(2)** (for example, in a case where the contract is oral), it is sufficient compliance with the requirements of that section if the claimant gives the missing information to the respondent and the adjudicator in the form of a statutory declaration together with any supporting documents that are available. 15 20
- 43 Nominating authorities**
- (1) The Minister may, on application made by any person in accordance with **subsection (2)**, authorise the applicant to nominate adjudicators for the purposes of this Act. 25
- (2) Every application for an authority must—
- (a) be in writing; and
 - (b) be accompanied by the prescribed information (if any).
- (3) The Minister may withdraw any authority given under this section. 30
- 44 Claimant may seek fresh adjudication if no adjudicator's notice of acceptance received or dispute not determined**
- (1) A claimant may take the actions set out in **subsection (2)** if either— 35
- (a) the claimant has not received any notice of acceptance from an adjudicator within 5 working days of the person referred to in **section 27** receiving a request to act as an adjudicator; or

-
- (b) an adjudicator who accepts an adjudication fails to determine the dispute within the time allowed by **section 36**.
- (2) The actions are—
- (a) the claimant may withdraw the notice of adjudication, by notice in writing served on every other party to the dispute and, as the case may be, the nominating body or the authorised nominating authority; and 5
 - (b) the claimant may serve a new notice of adjudication under **section 26**. 10
- (3) If a new notice of adjudication is served in accordance with this section, this Part applies as if no notice of adjudication had been served previously.
- 45 Parties may be represented at adjudication proceedings**
- (1) Any party to a dispute that has been referred to adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate. 15
- (2) **Subsection (1)** is subject to the adjudicator’s power to direct that the number of representatives present at a conference of the parties is to be limited to allow for the efficient conduct of proceedings. 20
- 46 Confidentiality of adjudication proceedings**
- (1) This section applies to the following information:
- (a) any statement, admission, or document created or made for the purposes of an adjudication; and 25
 - (b) any information (whether written or oral) that, for the purposes of the adjudication, is disclosed in the course of the adjudication.
- (2) The adjudicator and any party to a dispute must not disclose to another person any of the information to which this section applies except— 30
- (a) with the consent of the relevant party; or
 - (b) to the extent that the information is already in the public domain; or
 - (c) to the extent that disclosure is necessary for the purposes of, or in connection with, the adjudication or the enforcement of the adjudicator’s determination. 35

47 Adjudicator's fees

- (1) An adjudicator is entitled to be paid, by way of fees and expenses, an amount—
- (a) that is agreed between the adjudicator and the parties to the adjudication; or 5
 - (b) if there is no agreement, that is reasonable having regard to the work done and expenses incurred by the adjudicator.
- (2) The parties to the adjudication are jointly and severally liable to pay the adjudicator's fees and expenses. 10
- (3) The parties to the adjudication are each liable to contribute to the adjudicator's fees and expenses in equal proportions or, if the adjudicator determines that the claimant's adjudication claim or the respondent's response was unfounded, in the proportions that the adjudicator may determine. 15
- (4) An adjudicator is not entitled to be paid any fees and expenses in connection with an adjudication if he or she fails to determine the dispute (unless the adjudication claim is withdrawn or the dispute between the parties is resolved) within the time allowed by **section 36**. 20
- (5) **Subsection (4)** does not apply if an adjudicator refuses to communicate his or her determination on a dispute until his or her fees and expenses are paid.

48 Adjudicators excluded from liability

- (1) An adjudicator is not liable for anything done or omitted to be done in the course of the exercise or intended exercise of any of the adjudicator's functions, duties, or powers under this Act. 25
- (2) **Subsection (1)** does not exclude the liability of an adjudicator for anything done or omitted to be done in bad faith or without reasonable care. 30

Part 4**Other measures for securing payment under this Act**

Subpart 1—Suspension of work

- 49 Suspension of construction work** 35
- (1) A party who carries out construction work under a construction contract (**party A**) has the right to suspend work if—

-
- (a) any of the following circumstances applies:
- (i) a periodic payment required to be paid is not paid in full by the due date for its payment (other than an amount lawfully permitted to be retained, for example, a performance bond) and no payment schedule has been given by the party who ought to have made the payment (**party B**): 5
 - (ii) a periodic payment required to be paid is not paid in full by the due date for its payment (other than an amount lawfully permitted to be retained, for example, a performance bond) even though a payment schedule given by party B indicates a scheduled amount that party B proposes to pay to party A: 10
 - (iii) party B has not complied with an adjudicator's determination that party B must pay an amount to party A by a particular date; and 15
- (b) party A has served on party B a notice under **section 21(2)(b) or section 22(2)(b) or section 39(2)(b)**, as the case may be; and 20
- (c) the amount mentioned in **subsection (1)(a)(i) or subsection (1)(a)(ii)** is not paid, or the determination mentioned in **subsection (1)(a)(iii)** is not complied with, within 5 working days after the date of that notice. 25
- (2) If party A exercises the right conferred by **subsection (1)**, party A— 25
- (a) is not in breach of the construction contract; and
 - (b) is not liable for any loss or damage suffered by party B, or by any person claiming through party B; and
 - (c) keeps party A's rights under the contract, including any right to terminate the contract; and 30
 - (d) may at any time lift the suspension, even if the amount has not been paid or the determination has not been complied with.
- (3) The right to suspend work under a construction contract ceases when party B pays the amount in full or complies with the determination. 35

Subpart 2—Charges on land of related person

Charges on land: general

- 50 When amount determined by adjudicator constitutes charge on land of related person**
- (1) A claimant who carries out construction work under a construction contract is entitled to a charge against the construction site if—
- (a) the claimant has referred to adjudication a dispute about money owed to the claimant under the contract; and
 - (b) the claimant has sought the charge in the notice of adjudication; and
 - (c) the adjudicator has determined that the respondent—
 - (i) is a person related to the owner of the construction site; and
 - (ii) is liable to pay (whether in whole or in part) the money owed to the claimant.
- (2) A charge under **subsection (1)** may be registered in accordance with the Statutory Land Charges Registration Act 1928.
- (3) In this section and in **section 51**,—
- construction site** means the land on which the claimant has been carrying out construction work under the relevant construction contract
- owner** means a person who holds the fee simple title to land
- person related** has the same meaning as the words “person related to a company” in section CF 3(12) of the Income Tax Act 1994, except that, for the purposes of this Act, references in that provision to a specified company must be read as if they were references to an owner of a construction site.

Charges on land: procedure for adjudication

- 51 Special provisions for adjudication where charge sought by claimant**
- (1) **Part 3** applies to an adjudication in which the claimant seeks a charge against the construction site.
- (2) An adjudication in which the claimant seeks a charge against the construction site must be conducted—
- (a) having regard to the right of the owner of the construction site to be party to the adjudication proceedings and,

- in particular, the right of the owner to be present at those proceedings; and
- (b) by an adjudicator nominated for the purpose by an authorised nominating authority; and
 - (c) by an adjudicator who has the specific qualifications, expertise, and experience that may be prescribed (if any). 5
- (3) The claimant must, in addition to serving a notice of adjudication on every party to the relevant construction contract, serve a copy of that notice on the owner of the construction site. 10

Part 5 Miscellaneous provisions

52 Service of notices: general

Any notice or any other document required to be served on, or given to, any person under this Act or any regulation made under it is sufficiently served if— 15

- (a) it is delivered to that person; or
- (b) it is left at that person's usual or last known place of residence or business in New Zealand; or
- (c) it is posted in a letter addressed to the person at that place of residence or business in New Zealand; or 20
- (d) it is sent by fax; or
- (e) it is sent by e-mail or other similar means of communication; or
- (f) it is sent in the prescribed manner (if any). 25

53 Service of notices: post

If any notice or document is sent to any person by post under **section 52(c)**, it is taken to have been delivered to that person at the time when the letter would in the ordinary course of post be delivered and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted. 30

54 Service of notices: fax

A notice or document sent by fax under **section 52(d)** is, in the absence of proof to the contrary, served or given if the fax machine generated a record of the transmission of the notice or document to the fax machine of the recipient; and the date of the record is taken to be the date of receipt of that notice or document. 35

55 Service of notices: e-mail

A notice or document sent by e-mail or other similar means of communication under **section 52(e)** is, in the absence of proof to the contrary, regarded as having been served or given if—

- (a) the computer system used to transmit the notice or document—
 - (i) has received an acknowledgment or receipt from the e-mail address of the person receiving the notice or document; or
 - (ii) has not generated a record that the notice has failed to be transmitted; or
- (b) the person who served the notice or document proves that the notice or document was transmitted electronically to the e-mail address provided by the person on whom the notice is served or given.

56 Regulations

The Governor-General may, by Order in Council, make regulations providing for any matters contemplated by this Act that are necessary for its administration or necessary for giving it full effect.